

Kansas Administrative Regulations

Kansas Corporation Commission

Article 11.—Natural Gas Pipeline Safety

82-11-6. Procedures to ensure compliance with minimum safety standards.

The following procedures may be utilized by the commission to ensure compliance with the minimum safety standards of this article of the commission's regulations:

(a) Annual audit-inspection. Inspectors from the gas pipeline safety section of the commission may visit each operator annually, or as needed, to inspect the operator's operation and maintenance records and to perform field surveys and tests as required by this article of the commission's regulations. Audit-inspection evaluation forms shall be used to record information and test results obtained in each field inspection. The inspector shall record the observations, findings, and test results on an audit-inspection evaluation form. The inspector shall provide a copy of the audit-inspection evaluation form to the operator following the audit-inspection if the operator so requests. If the results of the audit-inspection indicate that the operator does not meet the requirements of this article of the commission's regulations, the gas pipeline safety section of the commission may issue a notice of probable violation as described in subsection (b).

(b) Issuance of notice of probable violation. If after an annual audit-inspection or any other audit, inspection, or review conducted by commission staff, the commission staff believes that an operator has violated any regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, the minimum safety standards adopted by this article of the commission's regulations, or any regulation or commission order, commission staff may serve a notice of probable violation against the operator. Service of a notice of probable violation may be conducted by standard U.S. mail, certified mail, hand delivery, or, if the operator consents to electronic service, electronic mail.

(c) Notice. Each notice of probable violation issued pursuant to subsection (b) shall include the following:

(1) A statement of each provision of statute, regulation, or commission order that the operator is alleged to have violated;

- (2) a statement of the evidence upon which the allegations are made; and
- (3) the recommended civil penalty or remedial action.

(d) Response to notice of probable violation. Within 30 days of receipt of a notice of probable violation, the operator shall respond by U.S. mail or electronic mail. Hard-copy responses shall be sent by U.S. mail to the commission's Topeka headquarters, gas pipeline safety section. Responses by electronic mail shall be electronically mailed to the address listed on the notice of probable violation. An operator's response to a notice of probable violation shall be made in at least one of the following ways:

(1) Submit written explanations, a statement of general denial, or other materials contesting the allegations. The written explanations, statements of general denial, or other materials contesting the allegations shall be verified by a signed statement from an authorized representative of the operator. An operator may verify the written explanations, statements of general denial, or other materials contesting the allegations with an electronic signature;

(2) submit a signed acknowledgment of commission staff's findings of violations or instances of noncompliance. An operator may verify its acknowledgment of commission staff's findings of violations or instances of noncompliance with an electronic signature from an authorized representative of the operator; or

(3) submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of violations or noncompliance. An operator may verify its proposal of remedial action with an electronic signature from an authorized representative of the operator.

(e) Follow-up inspection. If the inspection specified in subsection (a) reveals any instances of noncompliance or violations, the inspector shall return to the operator's premises within 90 calendar days of the date of the inspection, or as soon as is practicable, to perform a follow-up inspection. The inspector shall reinspect the operator's system and record any instances of noncompliance or violations. A follow-up audit-inspection evaluation form shall then be sent to the operator specifying any further action required by the operator.

(f) Amendment. Commission staff may amend a notice of probable violation at any time before the commission issues a civil penalty assessment. If an amendment

includes any new material allegations of fact or proposes an increased civil penalty assessment or additional remedial action, the operator shall have 30 days from service of the amended notice of probable violation to respond in accordance with subsection (d).

(g) Meeting with commission staff. If the inspector determines during the follow-up inspection that the violations or instances of noncompliance have not been corrected, the operator may be requested to attend an informal meeting at the commission offices or by telephone to discuss the operator's violations or instances of noncompliance with the minimum safety standards of this article of the commission's regulations, regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, or any applicable regulation or commission order.

(h) Default admissions. Unless good cause is shown or a consent agreement is executed by commission staff and the operator before the expiration of the 30-day time limit specified in subsection (d), the failure of an operator to timely respond to a notice of probable violation shall constitute an admission to all factual allegations made by commission staff and may be used against the operator in future proceedings.

(i) Consent agreement. Commission staff and an operator may agree to modify a proposed civil penalty assessment or remedial action by joint execution of a consent agreement. Modifications to a civil penalty assessment may include a reduction in the civil penalty assessment or nonmonetary remedial action in lieu of monetary penalties. The consent agreement shall become effective if the commission issues an order approving the consent agreement. Each consent agreement shall include the following:

- (1) An admission by the operator of all jurisdictional facts;
- (2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's order approving the consent agreement;
- (3) an acknowledgment that the notice of probable violation may be used to construe the terms of the order approving the consent agreement; and
- (4) a statement of the actions required of the operator and the date by which the actions shall be completed.

(j) Issuance of order. No sooner than 30 days after service of a notice of probable violation upon an operator, an order against an operator may be issued by the commission. The order may impose a monetary civil penalty or require the operator to undertake remedial action or impose any other obligation or combination thereof for violating the minimum safety standards as adopted by this article of the commission's regulations, regulations adopted pursuant to K.S.A. 66-1,150 and amendments thereto, or any regulation or commission order identified in the notice of probable violation.

(k) Time to remit payment for penalty assessment. If an operator does not request a hearing and the commission issues a penalty order, the operator shall remit payment for any civil penalty assessment imposed by the commission within 20 days of service of a penalty order imposing the civil penalty assessment.

(l) Orders and hearings. Each order issued pursuant to this article of the commission's regulations shall comply with K.A.R. 82-1-232. Any operator may request a hearing on an order issued pursuant to this article of the commission's regulations by filing a request for hearing with the commission within 15 days of service of the order. Each hearing shall be conducted in accordance the commission's rules of practice and procedure. Except for orders approving a consent agreement, each order issued by the commission pursuant to this article of the commission's regulations shall include information detailing how an operator may request a hearing. Failure to request a hearing within 15 days from service of an order shall be deemed an admission of the alleged violations or instances of noncompliance in the order.

(m) Show cause hearings. A show cause hearing may be held by the commission regarding violations or instances of noncompliance of regulations adopted pursuant to K.S.A. 66-1,150, and amendments thereto, or any regulation or commission order. If the commission issues a show cause order before or during the course of an investigation, the gas pipeline safety section of the commission shall not be required to issue a notice of probable violation before the commission issues an order regarding any actual or potential violations or instances of noncompliance.

(n) Waiver of procedures. The requirements of this regulation may be waived by the commission and an interim order issued pursuant to K.A.R. 82-1-232 if any violations or

instances of noncompliance with the safety standards of this article of the commission's regulations present a probable danger to persons or property.

(Authorized by and implementing K.S.A. 66-106 and 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended Dec. 10, 2021.)

***** Authenticated Kansas Administrative Regulation *****